



U.S. Department of Justice

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June 26, 2017

Via ECF

The Honorable Richard M. Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: United States v. Ahmad Khan Rahimi,
16 Cr. 760 (RMB)**

Dear Judge Berman:

The Government respectfully submits this letter pursuant to the Court's June 22, 2017 order directing the Government to provide additional information concerning "the content of the proposed . . . testimony of [Aaron Zelin], including the bases and reasons upon which the testimony is to be presented." As set forth below, the Government anticipates that Mr. Zelin will provide limited testimony concerning four individuals the defendant, himself, specifically indicated inspired him to carry out the bombings and attempted bombings in New York and New Jersey on September 17, 2016. We anticipate that Mr. Zelin will explain to the jury who those individuals were, the terrorist organizations with which they were affiliated, and the types of violent acts they advocated and/or carried out. This information will assist the jury in evaluating certain critical evidence of the defendant's guilt.

I. Mr. Zelin's Anticipated Testimony

a. Background

As noted in the Government's opposition to the defendant's motion to preclude Mr. Zelin's testimony (the "Government Opposition"), the Government intends to call Aaron Zelin as an expert at trial. The Government anticipates that Mr. Zelin will testify about four individuals – Usama bin Laden, Anwar al-Aulaqi, Abu Mohammad al-Adnani, and Nidal Hasan – as well as certain aspects of the terrorist organizations with which they were affiliated.

Bin Laden, al-Aulaqi, al-Adnani, and Hasan each were referenced in the letter contained in the notebook that was recovered from the defendant during his arrest on September 19, 2016 (the “Letter”) – two days after he planted bombs in Seaside Park and Elizabeth, New Jersey and New York, New York, and minutes after he engaged in a shootout with police officers. As explained in the Government Opposition, the Letter, which appears to have been directed to the “USA Governmen[t],” laid out the defendant’s plans for committing the bombings. *See, e.g.*, Ex. B to Gov’t Opp’n at 7-8 (“[yo]ur [p]eople will hear [pi]pe bombs, [pressur]e cooker bom[bs] [going] off in the [UI] streets,” and “the sounds of the bombs will be he[ard] in the streets. Gun shots to your Police. Death to Your OPPRESSION.” It also indicated that the defendant had received “guid[a]nce” in carrying out his attacks from bin Laden, al-Aulaqi, and al-Adnani, and that he was “f[ollowing] Nidal Hassan.” *Id.* at 5. In addition, references to certain of these individuals, the organizations with which they were affiliated, and propaganda and other materials disseminated by those organizations were found in the defendant’s electronic communications beginning in at least 2012.

The Government intends to introduce the Letter, as well as certain of the defendant’s electronic communications and online activities – including emails, Internet searches, and stored images¹ – as evidence that the defendant committed the crimes charged in the Indictment with the requisite intent, and evidence of his motive, preparation, and plan under Rule 404(b). *See* Gov’t Opp’n at 17-19. In order to evaluate that evidence, the jurors must properly understand it. Zelin’s testimony is necessary to assist them in doing so. And because the individuals referenced in the Letter, as well as their affiliated organizations, are “beyond the knowledge of the average citizen,” the proposed testimony is both relevant and appropriate. *United States v. Amuso*, 21 F.3d 1251, 1264 (2d Cir. 1993); *United States v. Bilzerian*, 926 F.2d 1285, 1294 (2d Cir. 1991) (expert testimony admissible to “help a jury understand unfamiliar terms and concepts”); *United States v. Carson*, 702 F.2d 351, 369 (2d Cir. 1983) (expert law enforcement testimony admissible because police had “specialized knowledge, not possessed by the jury” that was helpful in understanding narcotics trafficking).²

¹ The Government will move *in limine* for a ruling permitting it to offer certain of these electronic communications and online activities in evidence at trial.

² Defense counsel argues that Mr. Zelin’s testimony is unnecessary because “everybody knows who Mr. Bin Laden is or was” and “the same argument holds true for everything else that flows.” Tr., Jun. 21, 2017 Conf. at 39. This argument has been squarely rejected by the Second Circuit. *See United States v. Amuso*, 21 F.3d 1251, 1264 (2d Cir. 1993) (“[d]espite the prevalence of organized crime stories in the news and popular media,” expert testimony concerning the “organization, structure, and terminology of organized crime families” was proper because “[a]side from the probability that the depiction of organized crime in movies and television is misleading, the fact remains that the operational methods of organized crime families are still beyond the knowledge of the average citizen”); *United States v. Farhane*, 634 F.3d 127, 159 (2d Cir. 2011) (same with respect to expert testimony concerning the history and structure of al Qaeda). And for good reason. Jurors are instructed and expected to make determinations of guilt based

b. Content of Anticipated Testimony

The Government anticipates that Mr. Zelin will provide testimony about bin Laden, al-Aulaqi, al-Adnani, and Hasan, as well the terrorist organizations with which they were affiliated. Specifically, Mr. Zelin is expected to provide the following opinions:

Usama bin Laden and al Qaeda

- Usama bin Laden founded al Qaeda in approximately 1988.
- Al Qaeda is a militant Islamist organization responsible for carrying out attacks on civilians, including Americans, and military targets in several countries, including the United States.
- In August 1996, bin Laden issued a self-described declaration of jihad, on behalf of al Qaeda, which was entitled “Declaration of War against the Americans Occupying the Land of the Two Holy Places” (the “1996 Declaration”). The “Two Holy Places” was a reference to Saudi Arabia, and the American occupation was a reference to U.S. military forces based in that country.
- In February 1998, bin Laden issued a fatwa (the “1998 Fatwa”). The 1998 Fatwa complained of the United States military’s occupation of the Arabian peninsula, as well as purported U.S. aggression against Iraqi people and U.S. support of Israel. The 1998 Fatwa declared all American citizens, civilian or military, legitimate targets and stated that it was the duty of all Muslims to kill Americans in their allies anywhere in the world.
- Since bin Laden’s death, al Qaeda’s leadership repeatedly has instructed its followers to carry out “lone-wolf” – or single actor – attacks against Americans and citizens of other Western countries.

Anwar al-Aulaqi and al Qaeda in the Arabian Peninsula

- Anwar al-Aulaqi was a Yemeni-American who was born in the United States and became an imam and Islamic lecturer. Al-Aulaqi, who was also known to his followers as “Sheikh Anwar,” became a senior leader of al Qaeda in the Arabian Peninsula (“AQAP”). He is widely considered to have

only on competent evidence admitted at trial, not on what some of them may have read about or seen on television.

been one of AQAP's key ideologues. Before his death in 2011, al-Aulaqi assisted in planning terrorist operations and attacks in, among other places, the United States and the United Kingdom.

- Al-Aulaqi released dozens of video and audio recordings of his lectures and sermons in which he, among other things, said that it was the duty of every Muslim to kill Americans, wherever in the world they could be found.
- AQAP was founded in 2009 and is considered the official branch of al Qaeda in Yemen and Saudi Arabia. Like al Qaeda, AQAP's primary goal is to establish an Islamic Caliphate and rid Muslim-majority countries of Western governments and influences.
- AQAP has called for, carried out, and claimed responsibility for terrorist attacks against Americans and other western civilian and military targets in, among other places, Yemen, Saudi Arabia, Europe, and the United States.
- In approximately 2010, AQAP founded *Inspire* magazine, its English-language, online propaganda publication. Since 2010, AQAP has released approximately 16 issues of *Inspire*. These issues include, among other things, translated messages from bin Laden; calls for its followers to carry out jihad, or holy war; and detailed instructions for carrying out lone-wolf attacks, including articles about how to build and detonate homemade bombs, such as "Make a bomb in the kitchen of your Mom," by "The AQ Chef," which contains detailed information regarding the construction of pipe bomb and pressure cooker bombs.³ In recent issues, *Inspire* has published post-attack "military analyses," in which it provides critiques of certain lone-wolf attacks carried out by individuals in various countries.
- AQAP continues to issue calls for Muslims to carry out jihad and commit lone wolf attacks against Americans.

Nidal Hasan

- On November 5, 2009, Nidal Hasan, a former major in the United States Army, fatally shot 13 people and injured more than 30 others during a lone-wolf terrorist attack at the Fort Hood Army Base in Texas.

³ The Government will offer testimony from separate forensic experts to establish that the defendant's bombs were constructed in a manner that tracks, in several key respects, the instructions from *Inspire*.

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- In the months leading up to the shooting, Hasan communicated with al-Aulaqi by email. In the email communications, Hasan sought guidance from al-Aulaqi on how and when to plan and carry out a suicide attack.
- After the Fort Hood shooting, al-Aulaqi issued a statement praising Hasan's actions and calling him a hero to his fellow Muslims.

Abu Mohammed al-Adnani and the Islamic State of Iraq and al-Sham

- Abu Mohammed al-Adnani was the official spokesperson and a senior leader of the Islamic State of Iraq and al-Sham ("ISIS") until his death in August 2016. He was also considered the chief of ISIS's external operations and, in that capacity, was responsible for planning operations and attacks in Europe and other places.
- ISIS is a militant Islamist group based in Iraq and Syria (also referred to as "al-Sham"). ISIS rose to prominence in 2014 when it declared itself a caliphate and consolidated its campaign to amass territory in the Middle East and Africa and drive westerners from the region. ISIS has planned, carried out, and claimed responsibility for terrorist operations and attacks, including lone-wolf attacks, in, among other places, Europe and the United States.
- Abu Mohammed al-Adnani gave several speeches on behalf of ISIS, which the group publicized and disseminated on the Internet. In his speeches, al-Adnani called for ISIS supporters to kill non-Muslims, in any manner possible, in the United States and other Western countries.
- ISIS uses various social media platforms to issue propaganda and terrorism-related content, in several languages including English, on a daily basis. Its messages include calls for its followers to commit terrorist attacks, including lone-wolf attacks, against Americans, Europeans, and others.
- *Dabiq* was an online, English-language magazine published by ISIS between 2014 and July 2016. ISIS used *Dabiq* to disseminate terrorist-related propaganda, promote the legitimacy of the ISIS caliphate, and recruit followers. *Dabiq* issues included calls for Muslims to carry out lone-wolf attacks in Western countries and provided detailed instructions on how to carry out such attacks.

II. Bases for Mr. Zelin's Testimony

Mr. Zelin's anticipated testimony will be based on, among other things, his education, research, and fields of study; as well as his regular review of materials, publications, and propaganda disseminated by the individuals and terrorist organizations about which he will testify.

First, Mr. Zelin has received extensive education, conducted comprehensive research, and provided opinions and analyses on the subjects about which he will testify.⁴ Mr. Zelin is the Richard Borow Fellow at the Washington Institute for Near East Policy. He holds a Master's degree in Islamic and Middle Eastern Studies from Brandeis University. He is a Ph.D candidate at King's College of London. Mr. Zelin's research focuses on how jihadist groups are adjusting to the new political environment in the era of Arab uprisings and politics in countries transiting to democracy. He has written and been published, including in peer-reviewed journals, about jihadist ideology; the origin and evolution of certain terrorist organizations, including al Qaeda and ISIS; the Western response and attempts to curtail the growth of global terrorism; and terrorist groups' use of the Internet and social media to disseminate propaganda and recruit followers. He has lectured on issues relating to jihadism and has testified twice before Congress concerning al Qaeda and the Islamic State in Tunisia, as well as al Qaeda and the Islamic State in Libya.

Mr. Zelin's academic experience, research, and fields of study alone are sufficient bases to permit him to offer the opinions outlined above. *See, e.g., McCulloch v. H.B. Fuller Co.*, 61 F.3d 1038, 1043 (2d Cir. 1995). Indeed, Mr. Zelin was previously qualified as an expert on militant jihadist groups in two federal trials: *United States v. Pugh*, 15 Cr. 116 (NGG) (E.D.N.Y. 2016) and *United States v. El Gammal*, 15 Cr. 588 (ER) (S.D.N.Y. 2017). Attached hereto as Exhibits B and C are the transcripts of Mr. Zelin's testimony in the *Pugh* and *El Gammal* trials, both of which set out in detail his qualifications, and further describe the factual bases for certain of the opinions he is expected to offer at trial in this case.

Second, and as set forth in his testimony from the *Pugh* and *El Gammal* trials, Mr. Zelin regularly reviews Arabic and English-language material "coming directly from . . . [the] Islamic State, al-Qaeda[, and] the various affiliates"; reviews information in the "local Arabic press in a particular country, western media, and . . . possibly public court information"; reviews, on a daily basis, social media, put out by ISIS and other militant jihadist groups, and has conducted interviews with individuals who support the militant jihadist groups he studies. Ex. B at 847-48. He also maintains a website, jihadology.net, which catalogues and provides translations and analyses of primary source materials disseminated by ISIS, al Qaeda, AQAP, and affiliates of those groups. *See* Ex. C at 437.

⁴ Mr. Zelin's *curriculum vitae* is attached hereto as Exhibit A.

Third, Mr. Zelin has reviewed, studied, translated, and written about various speeches, sermons, and videos made by the terrorist leaders about which he will testify – Usama bin Laden, Anwar al-Aulaqi, and Abu Mohammad al-Adnani – and their affiliated terrorist organizations, including their calls for attacks against Americans. This includes, among others, bin Laden’s 1996 Declaration of Jihad and the 1998 Fatwa; a video message released by al-Aulaqi in November 2010 directing his followers to kill Americans;⁵ a video released by al Qaeda on June 3, 2011 calling for lone wolf attacks;⁶ a video message released by al-Adnani in September 2014 calling for his followers to “to strive to your best and kill any disbeliever, whether he be French, American, or from any of their allies . . . [s]mash his head with a rock, or slaughter him with a knife, or run him over with your car, or throw him down from a high place, or choke him, or poison him”;⁷ a May 2017 video released by the current head of AQAP meant to inspire the “lone mujahid”;⁸ and a video released in May 2017 by the son of Usama bin Laden and head of al Qaeda directed to those who seek martyrdom in the West.⁹

Mr. Zelin’s education, research, and current employment; his experience lecturing, teaching, and testifying about topics relating to ISIS, al Qaeda, and other terrorist groups; and his regular review and study of materials disseminated by the individuals and groups about which he will testify provide a “considerable factual basis” for his proposed testimony. *United States v. Farhane*, 634 F.3d 127, 158–59 (2d Cir. 2011) (proposed terrorism expert’s testimony had sufficient factual basis, including “(1) his graduate studies. . . ; (2) his full time employment at two organizations focusing on terrorism and al Qaeda . . . ; (3) his authorship of various academic papers and a book on al Qaeda; (4) his provision of consulting services on terrorism and al Qaeda to various federal agencies; and (5) his ongoing efforts to collect, analyze, and catalogue written, audio, and visual materials relevant to terrorism generally and al Qaeda in particular”).

⁵ Available at <https://videopress.com/v/2bJ50QuB%20EMBED>

⁶ “As-Sahāb Media presents a new video message from al-Qā’idah: ‘For Incitement and Publishing: You Are Held Responsible Only for Yourself, Parts 1 and 2’,” Jan. 15, 2014, JIHADOLOGY.NET, available at <http://jihadology.net/2011/06/03/as-sahab-presents-a-new-video-message-from-al-qa'idah-thou-are-held-responsible-only-for-yourself-parts-1-2/>

⁷ Available at <https://archive.org/details/kalemahde1>

⁸ “New video message from al-Qā’idah in the Arabian Peninsula’s Shaykh Qāsim al-Raymī: ‘An Inspire Address #1: A Lone Mujāhid or An Army By Itself’,” May 7, 2017, JIHADOLOGY.NET, available at <http://jihadology.net/2017/05/07/new-video-message-from-al-qaidah-in-the-arabian-peninsulas-shaykh-qasim-al-raymi-an-inspire-address-1-a-lone-mujahid-or-an-army-by-itself/>

⁹ “New video message from al-Qā’idah’s Ḥamzah Bin Usāmah Bin Lāden: ‘Advice From Martyrdom-Seekers in the West’,” May 13, 2017, JIHADOLOGY.NET, available at <http://jihadology.net/2017/05/13/new-video-message-from-al-qaidahs-%E1%B8%A5amzah-bin-usamah-bin-laden-advice-from-martyrdom-seekers-in-the-west/>

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As set forth above and in the Government Opposition, Mr. Zelin's proposed testimony will assist the jury in understanding and evaluating other evidence of the defendant's guilt. It is therefore relevant and admissible. The Government has provided more than adequate notice to the defense of Mr. Zelin's qualifications, the bases for his testimony, and the subjects about which he is expected to testify. Accordingly, the defendant's motion to preclude testimony from Mr. Zelin should be denied.

Respectfully submitted,

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